

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 220 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

INDIVAR DILIP KAMETKAR

Versus

GOPALRAO ANANDRAO KAMTEKAR

Appearance:

MR KK SHAH for Petitioners

MR HM PARIKH for Respondent No. 5

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 19/06/97

ORAL JUDGEMENT

1. By this CRA the petitioner has challenged the
lnequality and validity of the order, dated 5.12.1984
passed by the 3rd Jt.Civil Judge(SD), Baroda in Darkhast
Application No.5/82 in Special Civil Suit No.305/73. The

woes of litigant in India actually start after the decree in favour of the party is passed, and the process of execution of decree is so cumbersome and replete with number of hurdles that the successful litigant would not get the fruits of the decree in his life time. This is illustrated by the present proceedings and in order to bring out the woes of the successful litigant whose has decree of possession of the premises in his favour and who has been prevented from enjoying the fruits of the decree following chronology of facts are brought about:

(i) The respondent Nos 1 to 4 are the owners of immovable property bearing S.No.101 admeasuring 21,000 Sq.Ft equivalent to 1797 Sq.Mtrs situated at Prof.Manekrao Road in the area of Ravjipura in the city of Baroda. The petitioner Nos 1 to 3 claimed to have 1/12th share each in such property. Respondent No.4 namely Dilip Sankarrao Kamtekar is the father of present three petitioners. The respondent No.5-Gangaben Rambhai Patel is the purchaser of the property pending litigation.

(ii) It is an admitted fact that by an agreement, dated 5.9.66 the respondent Nos 1 to 4 agreed to sell the said property to respondent No.5 for the price and upon the terms and conditions stated in the agreement of sale. However, disputes and differences have arisen between the vendors and the vendee and the respondent No.5 thereupon filed the suit against respondent Nos 1 to 4 who were defendants No.1 to 4 in the suit for specific performance of said agreement. The said suit was numbered as Spl.C.S.No.305/73.

(iii) By decree, dated 19.12.1978 the 3rd Jt.Civil Judge (SD), Baroda decreed the suit for specific performance of the said agreement of sale, dated 5.9.66.

(iv) After the said decree was passed the plaintiffs of the suit filed Special Darkhast No.5/82 in the court of 3rd Jt.Civil Judge (SD), Baroda interalia praying that the defendants should be directed to execute the conveyance deed of the property in their favour, that the defendants be ordered and directed to pay sum of Rs.56.40ps towards costs of the suit and that the defendants should be directed to pay sum of Rs.70,000/by way of damages for not having maintained the suit property in habitable condition.

(v) The original defendant Nos. 5, 6 and 7, the

petitioners herein, filed their reply under section 47 C.P.C.interalia contending that as they were minors not represented by guardian-ad-litem under the provisions of Order 32 Rule 3 of the CPC the decree for specific performance of said agreement, dated 5.9.66 was void under the provisions of Urban Land (Ceiling & Regulations) Act, 1972. They further prayed that the said decree, dated 19.12.1978 was nullity and not binding on them and that the said decree was incapable of being executed against the petitioners and that same was liable to be quashed and set aside.

(vi) Reply to said objections was filed on 3.8.83 to which a reply was filed on March 16, 1984.

(vii) The said application was heard on 26.9.84, 21, 22 & 30/11/1984 wherein the plaintiff interalia contended that the vakalatnama was signed by defendant No.4 in the Spl.C.S.No.305/73 in favour of advocate Mr.K.P.Shah and that the vakalatpatra was exhibited at Exh.22 in darkast proceedings. At Exh.21 purshis singed by advocate-K.P.Shah was prepared. There was another purshis dated 3.1.1975 which has been signed by defendant No.1 as duly constituted attorney and defendant No.2-7 which included the present petitioners.

(viii) By order, dated 5.12.1984 passed by 3rd Jt.Civil Judge(SD) Baroda the learned judge of the executing court rejected the objections raised by the present petitioner and directed the darkast application to be proceeded further forthwith and it is such order which is under challenge before this court.

2. It is also required to be noted that suit being Spl.C.S.No.305/73 was filed in the year 1972 and the decree was passed as back as 19.12.78. It is said decree of the year 1978 which is not executed till date and various objections filed against the execution of decree has rendered the decreeholder helpless. The decreeholder got the decree of possession of the property in the town like Baroda at Prof.Manekrao Road is thus not in position to enjoy the fruits of his decree. It is also required to be noted that the matter was notified for final hearing before various single judges of this court since December 1991. This CRA was admitted as back as 12.2.1985 and matter was dismissed for default on 19.12.1991 and once again such order was set aside and the matter was restored to file. Once again, on 3.4.95 J.N.Bhatt,J dismissed the matter for default and the same came to be restored to file on 18.4.95. Thus, it is to be noted that every attempt is made by the

judgment-debtor to see that after passing of the decree same is not executed.

3. It appears that in the Special Darkhast which was filed in the court of 3rd Jt.Civil Judge (CJ) Baroda in the year 1993 the main objection was filed by present three petitioners, who claimed to be under the age of 18 years at the time when the decree came to be passed. In fact, in the execution application also the objection was to the effect that the applicants were minors on the date of the decree and therefore the decree was nullity and was not binding on them. However, it is required to be noted that by order, dated 3rd July, 1970 passed by the High Court of Bombay in Miscellaneous Petition No.239/70 Rachana Dilip Kamtekar-respondent No.2 herein was also appointed as guardian of right, title and interest of minors in the joint family property at Baroda. The objection of the petitioner is that though their mother was appointed as their guardian that did not amount to her appointment as guardian ad-litem of the minors when the suit in question was filed and when the decree was passed on 19.12.1978. It is thus clear that the interest of the minors was represented and for one or other reason the execution of the decree for specific performance of an agreement for sale dated 5.9.66 is being thwarted. Gopalrao Anandrao, Arun Gopalrao, Shalinibai, W/o Shankerrao Anandrao and Dilip Shankerrao agreed to sell the suit property to Gangaben Rambhai Patel who was the plaintiff in the suit at a price of Rs.12.70ps per Sq.Ft for the land and Rs.75,000/- for the building. Gangaben Rambhai Patel-purchaser paid Rs.25,000/- towards Earnest Money and the property was agreed to be conveyed within six months. It appears that thereafter a meeting was held around 12.8.69 between the advocate for Gangaben Rambhai Patel on one hand and Gopalrao, Arun Gopalrao, Shalinibai and Dilip on the other hand who were parties to agreement to sale which was modified to the following extent:

- (a) Respondent No.1 was given a reduction of Rs.75,000/- in the final purchase price.
- (b) Respondent No.1 agreed to pay a further sum of Rs.35,000/- as additional earnest.
- (c) Respondent Nos 2 to 5 would apply to the High Court for sanctioning the sale on behalf of applicants.

(d) Respondent No.1 would carry out a survey of the property and in case of major discrepancy would inform the vendors.

(e) The sale would be completed within one month from the date of the order of the High Court sanctioning the sale or one month from the completion of a joint survey whichever was later.

It appears that thereafter Gopalrao Anandrao Kamtekar filed Miscellaneous Petition No.239/70 in the High Court of Bombay for sanction of sale of the property and by order, dated 3rd July, 1970 said sale was sanctioned. Thereafter joint survey of the property was carried out on 4.9.70. It was found that net available area of the property for sale was 19329 Sq.Ft. It is the case of the three minors that thereafter there was some agreement under which specific performance agreement was terminated. It is thereafter Indivar Dilip Kamtekar filed suit for specific performance of decree dated 19.12.1978 and it is the execution of such decree which is being thwarted. Special darkhast application No.5/82 was filed on 13.1.1982 calling upon the defendants to execute conveyance deed of the property in favour of plaintiffs and for direction to defendants to pay sum of Rs.5656.40ps. towards the costs of the suit and for payment of Rs.75,000/- to the plaintiffs by way of damages for not having maintained the suit property consisting of ground and second floors in good condition. In the said darkhast main objections were raised to the effect that the decree, dated 19.12.1978 was nullity and was not binding on the minors; that it was incapable of being executed against minors and that such decree was liable to be set aside. To such objections raised by minors, reply was filed and it was pointed out to the court that the guardian of the minors was already appointed in earlier proceedings by the Bombay High Court and that there was no need to appoint guardian again. Mother of the minors was appointed as guardian and she was thus representing the interests of the minor and therefore there was no need to appoint the guardian of minors afresh. Written submissions were filed by other parties in detail citing various authorities as to why the decree against minors was not executable and after taking into consideration all such objections and written submissions the executing court proceeded to pass the order below Special Darkhast No.5/82. The executing court overruled the objections after considering the objections and found that the interest of the minors was

fully represented by the guardian already appointed and also various other objections were specifically considered and dealt with. By order, dated 5.12.1984 the executing court rejected the objections and removed the obstacles in execution of the decree and directed that the darkhast should be proceeded further.

4. Now another attempt is made before this court to establish as to how the decree passed was a nullity especially when the mother of the minor was appointed as their guardian in the earlier proceedings before the Bombay High Court to represent the interest of minors. The present proceeding is nothing but an attempt to thwart the execution of decree for specific performance under one or other pretext and no specific ground is made out which would call for interference of this court. In fact every attempt is made by the judgment-debtor to see that the decree is not executed and even after the matter is notified for final hearing in this court as back as 1993 the petitioners have not taken any care to see that the matter is argued. About 5 times the matter is dismissed for default and is restored to file. Nothing is pointed out to this court which would render the decree passed by the trial court is nullity and I therefore do not find any substance in this CRA. It is nothing but an attempt to thwart the execution of the decree passed in the suit of the year 1973. Even after the institution of present revision application after a period of 12 years every attempt is made to see that the revision application is not heard and therefore this CRA is dismissed. Rule is discharged. Interim relief stands vacated. No costs. Office is directed to send down the writ of this judgment to the executing court forthwith with a direction to proceed further with the execution proceedings.

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